

CHAPTER 12--ADJUSTMENT OF DEBTS OF A FAMILY FARMER  
WITH REGULAR ANNUAL INCOME

SUBCHAPTER I--OFFICERS, ADMINISTRATION, AND THE ESTATE

§ 1201. Stay of action against codebtor

(a) Except as provided in subsections (b) and (c) of this section, after the order for relief under this chapter, a creditor may not act, or commence or continue any civil action, to collect all or any part of a consumer debt of the debtor from any individual that is liable on such debt with the debtor, or that secured such debt, unless--

(1) such individual became liable on or secured such debt in the ordinary course of such individual's business; or

(2) the case is closed, dismissed, or converted to a case under chapter 7 of this title.

(b) A creditor may present a negotiable instrument, and may give notice of dishonor of such an instrument.

(c) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided by subsection (a) of this section with respect to a creditor, to the extent that--

(1) as between the debtor and the individual protected under subsection (a) of this section, such individual received the consideration for the claim held by such creditor;

(2) the plan filed by the debtor proposes not to pay such claim; or

(3) such creditor's interest would be irreparably harmed by continuation of such stay.

(d) Twenty days after the filing of a request under subsection (c)(2) of this section for relief from the stay provided by subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the debtor or any individual that is liable on such debt with the debtor files and serves upon such party in interest a written objection to the taking of the proposed action.

§ 1202. Trustee

(a) If the United States trustee has appointed an individual under section 586(b) of title 28 to serve as standing trustee in cases under this chapter and if such individual qualifies as a trustee under section 322 of this title, then such individual shall serve as trustee in any case filed under this chapter. Otherwise, the United States trustee shall appoint one disinterested person to serve as trustee in the case or the United States trustee may serve as trustee in the case if necessary.

(b) The trustee shall--

(1) perform the duties specified in sections 704(2), 704(3), 704(5), 704(6), 704(7), and 704(9) of this title;

(2) perform the duties specified in section 1106(a)(3) and 1106(a)(4) of this title if the court, for cause and on request of a party in interest, the trustee, or the United States trustee, so orders;

- (3) appear and be heard at any hearing that concerns--
  - (A) the value of property subject to a lien;
  - (B) confirmation of a plan;
  - (C) modification of the plan after confirmation; or
  - (D) the sale of property of the estate;
- (4) ensure that the debtor commences making timely payments required by a confirmed plan; ~~and~~<sup>1</sup>
- (5) if the debtor ceases to be a debtor in possession, perform the duties specified in sections 704(8), 1106(a)(1), 1106(a)(2), 1106(a)(6), 1106(a)(7), and 1203-; ~~and~~<sup>2</sup>
- (6) if, with respect to an individual debtor, there is a claim for a domestic support obligation, provide the applicable notification specified in subsection (c).<sup>3</sup>**
- (c) (1) In any case described in subsection (b)(6), the trustee shall-**
  - (A) (i) notify in writing the holder of the claim of the right of that holder to use the services of a State child support enforcement agency established under sections 464 and 466 of the Social Security Act (42 U.S.C. 664, 666) for the State in which the holder resides; and**
    - (ii) include in the notice under this paragraph the address and telephone number of the child support enforcement agency; and**
  - (B) (i) notify, in writing, the State child support agency (of the State in which the holder of the claim resides) of the claim;**
    - (ii) include in the notice under this paragraph the name, address, and telephone number of the holder of the claim; and**
    - (iii) at such time as the debtor is granted a discharge under section 1228, notify the holder of the claim and the State child support agency of the State in which that holder resides of-**
      - (I) the granting of the discharge;**
      - (II) the last recent known address of the debtor;**
      - (III) the last recent known name and address of the debtor's employer; and**
      - (IV) with respect to the debtor's case, the name of each creditor that holds a claim that-**
        - (aa) is not discharged under paragraph (2), (4), or (14) of section 523(a); or**
        - (bb) was reaffirmed by the debtor under section 524(c).**

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<sup>1</sup>Bankruptcy Reform Act of 2001, sec. 219(c)(1)(A).

<sup>2</sup>Bankruptcy Reform Act of 2001, sec. 219(c)(1)(B).

<sup>3</sup>Bankruptcy Reform Act of 2001, sec. 219(c)(1)(C).

**(2) (A) A holder of a claim or a State child support agency may request from a creditor described in paragraph (1)(B)(iii)(IV) the last known address of the debtor.**

**(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable to the debtor or any other person by reason of making that disclosure.<sup>4</sup>**

#### § 1203. Rights and powers of debtor

Subject to such limitations as the court may prescribe, a debtor in possession shall have all the rights, other than the right to compensation under section 330, and powers, and shall perform all the functions and duties, except the duties specified in paragraphs (3) and (4) of section 1106(a), of a trustee serving in a case under chapter 11, including operating the debtor's farm.

#### § 1204. Removal of debtor as debtor in possession

(a) On request of a party in interest, and after notice and a hearing, the court shall order that the debtor shall not be a debtor in possession for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor, either before or after the commencement of the case.

(b) On request of a party in interest, and after notice and a hearing, the court may reinstate the debtor in possession.

#### § 1205. Adequate protection

(a) Section 361 does not apply in a case under this chapter.

(b) In a case under this chapter, when adequate protection is required under section 362, 363, or 364 of this title of an interest of an entity in property, such adequate protection may be provided by--

(1) requiring the trustee to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of property securing a claim or of an entity's ownership interest in property;

(2) providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease, or grant results in a decrease in the value of property securing a claim or of an entity's ownership interest in property;

(3) paying to such entity for the use of farmland the reasonable rent customary in the community where the property is located, based upon the rental value, net income, and earning

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<sup>4</sup>Bankruptcy Reform Act of 2001, sec. 219(c)(2).

capacity of the property; or

(4) granting such other relief, other than entitling such entity to compensation allowable under section 503(b)(1) of this title as an administrative expense, as will adequately protect the value of property securing a claim or of such entity's ownership interest in property.

#### § 1206. Sales free of interests

After notice and a hearing, in addition to the authorization contained in section 363(f), the trustee in a case under this chapter may sell property under section 363(b) and (c) free and clear of any interest in such property of an entity other than the estate if the property is farmland or farm equipment, except that the proceeds of such sale shall be subject to such interest.

#### § 1207. Property of the estate

(a) Property of estate includes, in addition to the property specified in section 541 of this title--

(1) all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7 of this title, whichever occurs first; and

(2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7 of this title, whichever occurs first.

(b) Except as provided in section 1204, a confirmed plan, or an order confirming a plan, the debtor shall remain in possession of all property of the estate.

#### § 1208. Conversion or dismissal

(a) The debtor may convert a case under this chapter to a case under chapter 7 of this title at any time. Any waiver of the right to convert under this subsection is unenforceable.

(b) On request of the debtor at any time, if the case has not been converted under section 706 or 1112 of this title, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable.

(c) On request of a party in interest, and after notice and a hearing, the court may dismiss a case under this chapter for cause, including--

(1) unreasonable delay, or gross mismanagement, by the debtor that is prejudicial to creditors;

(2) nonpayment of any fees and charges required under chapter 123 of title 28;

(3) failure to file a plan timely under section 1221 of this title;

(4) failure to commence making timely payments required by a confirmed plan;

(5) denial of confirmation of a plan under section 1225 of this title and denial of a request made for additional time for filing another plan or a modification of a plan;

(6) material default by the debtor with respect to a term of a confirmed plan;

(7) revocation of the order of confirmation under section 1230 of this title, and denial of confirmation of a modified plan under section 1229 of this title;

(8) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; ~~or~~<sup>5</sup>

(9) continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation; ~~and~~<sup>6</sup>

**(10) failure of the debtor to pay any domestic support obligation that first becomes payable after the date on which the petition is filed.**<sup>7</sup>

(d) On request of a party in interest, and after notice and a hearing, the court may dismiss a case under this chapter or convert a case under this chapter to a case under chapter 7 of this title upon a showing that the debtor has committed fraud in connection with the case.

(e) Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter.

## SUBCHAPTER II--THE PLAN

### § 1221. Filing of plan

The debtor shall file a plan not later than 90 days after the order for relief under this chapter, except that the court may extend such period if the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable.

### § 1222. Contents of plan

(a) The plan shall--

(1) provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan;

~~(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim; and~~<sup>8</sup>

**(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507, unless-**

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<sup>5</sup>Bankruptcy Reform Act of 2001, sec. 213(2)(A).

<sup>6</sup>Bankruptcy Reform Act of 2001, sec. 213(2)(B).

<sup>7</sup>Bankruptcy Reform Act of 2001, sec. 213(2)(C).

<sup>8</sup>Bankruptcy Reform Act of 2001, sec. 213(3)(A).

**(A) the claim is a claim owed to a governmental unit that arises as a result of the sale, transfer, exchange, or other disposition of any farm asset used in the debtor's farming operation, in which case the claim shall be treated as an unsecured claim that is not entitled to priority under section 507, but the debt shall be treated in such manner only if the debtor receives a discharge; or**

**(B) the holder of a particular claim agrees to a different treatment of that claim;<sup>9</sup>**

(3) if the plan classifies claims and interests, provide the same treatment for each claim or interest within a particular class unless the holder of a particular claim or interest agrees to less favorable treatment; and<sup>10</sup>

**(4) notwithstanding any other provision of this section, a plan may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a 5-year period, beginning on the date that the first payment is due under the plan, will be applied to make payments under the plan.<sup>11</sup>**

(b) Subject to subsections (a) and (c) of this section, the plan may--

(1) designate a class or classes of unsecured claims, as provided in section 1122 of this title, but may not discriminate unfairly against any class so designated; however, such plan may treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with the debtor differently than other unsecured claims;

(2) modify the rights of holders of secured claims, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;

(3) provide for the curing or waiving of any default;

(4) provide for payments on any unsecured claim to be made concurrently with payments on any secured claim or any other unsecured claim;

(5) provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due;

(6) subject to section 365 of this title, provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section;

(7) provide for the payment of all or part of a claim against the debtor from property of the estate or property of the debtor;

(8) provide for the sale of all or any part of the property of the estate or the distribution of all or any part of the property of the estate among those having an interest in such property;

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<sup>9</sup>Bankruptcy Reform Act of 2001, sec. 1003(a).

<sup>10</sup>Bankruptcy Reform Act of 2001, sec. 213(3)(B).

<sup>11</sup>Bankruptcy Reform Act of 2001, sec. 213(3)(C).

(9) provide for payment of allowed secured claims consistent with section 1225(a)(5) of this title, over a period exceeding the period permitted under section 1222(c);

(10) provide for the vesting of property of the estate, on confirmation of the plan or at a later time, in the debtor or in any other entity; and<sup>12</sup>

**(11) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under section 1328(a), except that such interest may be paid only to the extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims;**<sup>13</sup>

~~(11)~~ **(12)**<sup>14</sup> include any other appropriate provision not inconsistent with this title.

(c) Except as provided in subsections (b)(5) and (b)(9), the plan may not provide for payments over a period that is longer than three years unless the court for cause approves a longer period, but the court may not approve a period that is longer than five years.

(d) Notwithstanding subsection (b)(2) of this section and sections 506(b) and 1225(a)(5) of this title, if it is proposed in a plan to cure a default, the amount necessary to cure the default, shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.

#### § 1223. Modification of plan before confirmation

(a) The debtor may modify the plan at any time before confirmation, but may not modify the plan so that the plan as modified fails to meet the requirements of section 1222 of this title.

(b) After the debtor files a modification under this section, the plan as modified becomes the plan.

(c) Any holder of a secured claim that has accepted or rejected the plan is deemed to have accepted or rejected, as the case may be, the plan as modified, unless the modification provides for a change in the rights of such holder from what such rights were under the plan before modification, and such holder changes such holder's previous acceptance or rejection.

#### § 1224. Confirmation hearing

After expedited notice, the court shall hold a hearing on confirmation of the plan. A party in interest, the trustee, or the United States trustee may object to the confirmation of the plan. Except for cause, the hearing shall be concluded not later than 45 days after the filing of the plan.

#### § 1225. Confirmation of plan

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<sup>12</sup>S. 220 fails to strike “and” in subsection (10) and add it in new subsection (11).

<sup>13</sup>Bankruptcy Reform Act of 2001, sec. 213(4)(B).

<sup>14</sup>Bankruptcy Reform Act of 2001, sec. 213(4)(A).

- (a) Except as provided in subsection (b), the court shall confirm a plan if--
- (1) the plan complies with the provisions of this chapter and with the other applicable provisions of this title;
  - (2) any fee, charge, or amount required under chapter 123 of title 28, or by the plan, to be paid before confirmation, has been paid;
  - (3) the plan has been proposed in good faith and not by any means forbidden by law;
  - (4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;
  - (5) with respect to each allowed secured claim provided for by the plan--
    - (A) the holder of such claim has accepted the plan;
    - (B) (i) the plan provides that the holder of such claim retain the lien securing such claim; and
      - (ii) the value, as of the effective date of the plan, of property to be distributed by the trustee or the debtor under the plan on account of such claim is not less than the allowed amount of such claim; or
    - (C) the debtor surrenders the property securing such claim to such holder;
- and<sup>15</sup>
- (6) the debtor will be able to make all payments under the plan and to comply with the plan; and<sup>16</sup>
- (7) if the debtor is required by a judicial or administrative order or statute to pay a domestic support obligation, the debtor has paid all amounts payable under such order for such obligation that first become payable after the date on which the petition is filed.**<sup>17</sup>
- (b) (1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan--
- (A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or
  - (B) the plan provides that all of the debtor's projected disposable income to be received in the three-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.
- (2) For purposes of this subsection, "disposable income" means income which is

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<sup>15</sup>Bankruptcy Reform Act of 2001, sec. 213(5)(A).

<sup>16</sup>Bankruptcy Reform Act of 2001, sec. 213(5)(B).

<sup>17</sup>Bankruptcy Reform Act of 2001, sec. 213(5)(C).



received by the debtor and which is not reasonably necessary to be expended--

(A) for the maintenance or support of the debtor or a dependent of the debtor **or for a domestic support obligation that first becomes payable after the date on which the petition is filed<sup>18</sup>**; or

(B) for the payment of expenditures necessary for the continuation, preservation, and operation of the debtor's business.

(c) After confirmation of a plan, the court may order any entity from whom the debtor receives income to pay all or any part of such income to the trustee.

#### § 1226. Payments

(a) Payments and funds received by the trustee shall be retained by the trustee until confirmation or denial of confirmation of a plan. If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan. If a plan is not confirmed, the trustee shall return any such payments to the debtor, after deducting--

(1) any unpaid claim allowed under section 503(b) of this title; and

(2) if a standing trustee is serving in the case, the percentage fee fixed for such standing trustee.

(b) Before or at the time of each payment to creditors under the plan, there shall be paid--

(1) any unpaid claim of the kind specified in section 507(a)(1) of this title; and

(2) if a standing trustee appointed under section 1202(c) of this title is serving in the case, the percentage fee fixed for such standing trustee under section 1202(d) of this title.

(c) Except as otherwise provided in the plan or in the order confirming the plan, the trustee shall make payments to creditors under the plan.

#### § 1227. Effect of confirmation

(a) Except as provided in section 1228(a) of this title, the provisions of a confirmed plan bind the debtor, each creditor, each equity security holder, and each general partner in the debtor, whether or not the claim of such creditor, such equity security holder, or such general partner in the debtor is provided for by the plan, and whether or not such creditor, such equity security holder, or such general partner in the debtor has objected to, has accepted, or has rejected the plan.

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

(c) Except as provided in section 1228(a) of this title and except as otherwise provided in the plan or in the order confirming the plan, the property vesting in the debtor under subsection (b) of this section is free and clear of any claim or interest of any creditor provided for by the plan.

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<sup>18</sup>Bankruptcy Reform Act of 2001, sec. 218(a).

§ 1228. Discharge

(a) As soon as practicable after completion by the debtor of all payments under the plan, **and in the case of a debtor who is required by a judicial or administrative order to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for in the plan) have been paid**<sup>19</sup>, other than payments to holders of allowed claims provided for under section 1222(b)(5) or ~~1222(b)(10)~~ **1222(b)(9)**<sup>20 21</sup> of this title, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan allowed under section 503 of this title or disallowed under section 502 of this title, except any debt--

(1) provided for under section 1222(b)(5) or ~~1222(b)(10)~~ **1222(b)(9)**<sup>22 23</sup> of this title;

or

(2) of the kind specified in section 523(a) of this title.

(b) At any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if--

(1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;

(2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and

(3) modification of the plan under section 1229 of this title is not practicable.

(c) A discharge granted under subsection (b) of this section discharges the debtor from all unsecured debts provided for by the plan or disallowed under section 502 of this title, except any debt--

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<sup>19</sup>Bankruptcy Reform Act of 2001, sec. 213(6).

<sup>20</sup>114 Stat 2410, \*2414, sec. 208 (same language in S. 220, sec. 1209).

<sup>21</sup>Bankruptcy Reform Act of 2001, sec. 1219 (same language in 114 Stat 2410, \*2414, sec. 208).

<sup>22</sup>114 Stat 2410, \*2414, sec. 208 (same language in S. 220, sec. 1209).

<sup>23</sup>Bankruptcy Reform Act of 2001, sec. 1219 (same language in 114 Stat 2410, \*2414, sec. 208).

- (1) provided for under section 1222(b)(5) or ~~1222(b)(10)~~ **1222(b)(9)**<sup>24</sup> <sup>25</sup> of this title;
- or
- (2) of a kind specified in section 523(a) of this title.
- (d) On request of a party in interest before one year after a discharge under this section is granted, and after notice and a hearing, the court may revoke such discharge only if--
- (1) such discharge was obtained by the debtor through fraud; and
- (2) the requesting party did not know of such fraud until after such discharge was granted.
- (e) After the debtor is granted a discharge, the court shall terminate the services of any trustee serving in the case.

#### § 1229. Modification of plan after confirmation

- (a) At any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, on request of the debtor, the trustee, or the holder of an allowed unsecured claim, to--
- (1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;
- (2) extend or reduce the time for such payments; or
- (3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan.
- (b) (1) Sections 1222(a), 1222(b), and 1223(c) of this title and the requirements of section 1225(a) of this title apply to any modification under subsection (a) of this section.
- (2) The plan as modified becomes the plan unless, after notice and a hearing, such modification is disapproved.
- (c) A plan modified under this section may not provide for payments over a period that expires after three years after the time that the first payment under the original confirmed plan was due, unless the court, for cause, approves a longer period, but the court may not approve a period that expires after five years after such time.

#### § 1230. Revocation of an order of confirmation

- (a) On request of a party in interest at any time within 180 days after the date of the entry of an order of confirmation under section 1225 of this title, and after notice and a hearing, the court may revoke such order if such order was procured by fraud.

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<sup>24</sup>114 Stat 2410, \*2414, sec. 208 (same language as S. 220, sec. 1209).

<sup>25</sup>Bankruptcy Reform Act of 2001, sec. 1219 (same language as 114 Stat 2410, \*2414, sec. 208).

(b) If the court revokes an order of confirmation under subsection (a) of this section, the court shall dispose of the case under section 1207 of this title, unless, within the time fixed by the court, the debtor proposes and the court confirms a modification of the plan under section 1229 of this title.

#### § 1231. Special tax provisions

~~(a) For the purpose of any State or local law imposing a tax on or measured by income, the taxable period of a debtor that is an individual shall terminate on the date of the order for relief under this chapter, unless the case was converted under section 706 of this title.~~

~~(b) The trustee shall make a State or local tax return of income for the estate of an individual debtor in a case under this chapter for each taxable period after the order for relief under this chapter during which the case is pending.<sup>26</sup>~~

~~(c)~~ **(a)**<sup>27</sup> The issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under a plan confirmed under section 1225 of this title, may not be taxed under any law imposing a stamp tax or similar tax.

~~(d)~~ **(b)**<sup>28</sup> The court may authorize the proponent of a plan to request a determination, limited to questions of law, by ~~a State or local governmental unit~~ **any governmental unit**<sup>29</sup> charged with responsibility for collection or determination of a tax on or measured by income, of the tax effects, under section 346 of this title and under the law imposing such tax, of the plan. In the event of an actual controversy, the court may declare such effects after the earlier of--

(1) the date on which such governmental unit responds to the request under this subsection; or

(2) 270 days after such request.

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<sup>26</sup>Bankruptcy Reform Act of 2001, sec. 719(b)(3)(A).

<sup>27</sup>Bankruptcy Reform Act of 2001, sec. 719(b)(3)(B).

<sup>28</sup>Bankruptcy Reform Act of 2001, sec. 719(b)(3)(B).

<sup>29</sup>Bankruptcy Reform Act of 2001, sec. 1003(b).